BEFORE THE ARIZONA MEDICAL BOARD

In the Matter of **GABRIEL U. OGBONNAYA, M.D.,** Holder of License No. 32142 for the Practice of Allopathic Medicine In the State of Arizona.	Board Case No. MD-11A-32142-MDX **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER** **(Revocation)**

On February 1, 2012, this matter came before the Arizona Medical Board ("Board") for consideration of the Administrative Law Judge (ALJ) Brian Brendan Tully's proposed Findings of Fact, Conclusions of Law and Recommended Order. Gabriel U. Ogbonnaya, M.D., ("Respondent") appeared before the Board with legal Counsel Holly R. Gieszl; Assistant Attorney General Anne Froedge, represented the State. Christopher Munns with the Solicitor General's Section of the Attorney General's Office, was available to provide independent legal advice to the Board.

The Board, having considered the ALJ's decision and the entire record in this matter, hereby issues the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. The Arizona Medical Board ("Board") is the authority for licensing and regulating the practice of allopathic medicine in the State of Arizona.
2. Gabriel U. Ogbonnaya, M.D. ("Respondent") is the holder of License No. 32142 for the practice of allopathic medicine in Arizona. Respondent obtained his Arizona license on October 17, 2003. He is board certified in internal medicine.
3. The Board referred Case No. 11A-32142-MDX to the Office of Administrative Hearings, an independent agency, for a consolidated hearing for two cases: MD-10-0805A and MD-10-1036A.
4. MD-10-0805A involved quality of care, inadequate records and sexual conduct with patients by Respondent.
5. MD-10-1036A involved an allegation that Respondent violated a Board Order.

Case Number MD-10-0805A

6. The Board initiated case number MD-10-0805A after receiving a press release article from the Mesa Police Department stating that Respondent had been arrested on June 9, 2010, for sexual abuse after two patients, AT and KH, reported that Respondent had touched them inappropriately.

7. On June 11, 2010, the Board's assigned investigator, Celina Shepherd, interviewed patients AT and KH.

8. On June 11, 2010, the Board's site inspector, Elle J. Steger, arrived at Respondent's internal medicine and urgent care clinic to perform a site inspection. Ms. Steger's objective was to obtain copies of medical reports for patients AT and KH, and to serve Respondent with a notice letter. Upon arriving at the clinic, Ms. Steger found three patients waiting outside the building. The building's doors were locked. Ms. Steger was unable to gain access to the building.

9. By letter dated June 11, 2010, Ms. Shepherd advised Respondent that the Board had commenced an investigation of an allegation of inappropriate sexual touching by him of patients AT and KH. Ms. Shepherd requested complete copies of the medical records for patients AT and KH no later than June 14, 2010.

10. On June 14, 2010, the Board received Respondent's reply dated June 12, 2010, together with the medical records for patients AT and KH.

11. On June 14, 2010, Ms. Shepherd also interviewed another patient, MAG, who claimed to have been inappropriately touched by Respondent.

12. By letter dated June 14, 2010, Ms. Shepherd advised Respondent of additional allegations of inappropriate touching of patients MC, MAG, and MG. Ms. Shepherd requested the medical files for those patients no later than June 15, 2010.

13. By letter dated June 14, 2010, Respondent responded to Ms. Shepherd's June 14, 2010 letter. Respondent reported that earlier that day, staff of the Attorney General's office and from the Board had conducted an unannounced site inspection at his office and had obtained the requested medical records. Respondent also provided "additional copies of some portions of these records for your easy reference."

14. On June 15, 2010, Ms. Shepherd issued an Investigative Report. In that report she advises that the Board's staff had been working with Detective Kessler from the Mesa Police Department, who reported that 30 witnesses had come forward.

15. On June 15, 2010, Respondent was interviewed by Board staff.

16. On June 16, 2010, after an emergency Board meeting to consider summary action against Respondent regarding those allegations, Respondent and the Board entered into an Interim Consent Agreement for Practice Restriction and Psychosexual Evaluation that provides for the following:

INTERIM CONSENT AGREEMENT

By mutual agreement and understanding, between the [Board] and [Respondent], the parties agree to the following interim disposition of this matter.

1. Respondent has read and understands this Interim Consent Agreement and the stipulated Findings of Fact, Conclusions of Law and Order ("Interim Consent Agreement.")[.] Respondent acknowledges that he understands he has the right to consult with legal counsel regarding this matter.

2. By entering into this Interim Consent Agreement Respondent voluntarily relinquishes any rights to a hearing or judicial review in state or federal court on the matters alleged, or to challenge this Interim Consent Agreement in its entirety as issued by the Board, and waives any other cause of action related thereto or arising from said Interim Consent Agreement.

3. That this Interim Consent Agreement will not become effective until signed by the Executive Director.

4. All admissions made by Respondent are solely for final disposition of this matter and any subsequent related administrative proceedings or civil litigation involving the Board and Respondent. Therefore, said admissions by Respondent are not intended or made for any other use, such as in the context of another state or federal government regulatory agency proceeding, civil or criminal court proceeding, in the State of Arizona or any other state or federal court.

5. Respondent may not make any modifications to the document. Upon signing this agreement, and returning this document (or a copy thereof) to the Executive Director, Respondent may not revoke acceptance of the Interim Consent Agreement. Any modifications to this Interim Consent Agreement are ineffective and void unless mutually approved by the parties.

6. This Interim Consent Agreement, once approved and signed, is a public record that will be publicly disseminated as a

formal action of the Board and will be reported to the National Practitioner Databank and on the Board's website.

7. If any part of the Interim Consent Agreement is later declared void or otherwise unenforceable, the remainder of the Interim Consent Agreement in its entirety shall remain in force and effect.

. . . .

FINDINGS OF FACT

1. The Board is the duly constituted authority for the regulation and control of the practice of allopathic medicine in the State of Arizona.

2. Respondent is the holder of license number 32142 for the practice of allopathic medicine in the State of Arizona.

3. The Board received information that Respondent was arrested by the Mesa Police Department on June 9, 2010, for sexual abuse after two patients alleged that he had touched them inappropriately.

4. Based on the information in the Board's possession there is evidence that the public health and safety requires that Respondent's practice of allopathic medicine be restricted while the investigation of this case continues.

CONCLUSIONS OF LAW

1. The Arizona Medical Board possesses jurisdiction over the subject matter and over Respondent.

2. The Executive Director may enter into a consent agreement with a physician if there is evidence of danger to the public health and safety. A.R.S. § 32-1405(C) (25); A.A.C. R4-16-504.

ORDER

IT IS HEREBY ORDERED that:

1. Respondent's license to practice allopathic medicine in the State of Arizona is restricted in that he must have a female chaperone present at any time he treats or examines a female patient. The chaperone must be a licensed healthcare professional and Respondent shall have her submit a chaperone authorization form to Board staff for approval prior to the chaperone serving in that capacity. The medical records must contain a statement that the chaperone was present in the room during the entire office visit and had an unencumbered view of the patient. Respondent shall instruct

the chaperone to document her presence by signing, dating and legibly printing her name on each patient's chart at the time of the office visit. Respondent must notify any facility where he practices of the consent agreement and its requirements.

2. Board staff shall conduct random chart reviews to assure compliance with this Order.

3. Respondent agrees to successfully complete a residential psychosexual evaluation at a Board-approved facility, at his own expense, within the next 30 days and follow all recommendations. The facility or evaluator shall provide a written confidential evaluation report to the Board or authorized Board staff. The facility or evaluator is conducting the evaluation and report solely for the benefit of the Board, thus the facility or evaluator is not treating Respondent as a patient. Respondent shall authorize a release of information between Board staff and the facility or evaluator to include all records relating to Respondent's current or previous medical or psychological/psychiatric history and diagnoses. Failure to complete any portion of the evaluation is a violation of this Interim Order. Based upon the result of the evaluation, Board staff may modify the practice restriction.

4. Respondent shall provide a copy of this Order to the facility or evaluator conducting his evaluation.

5. As Respondent is undergoing the psychosexual evaluation pursuant to a Board Order, he shall instruct any attorney retained on his behalf not to contact the facility or evaluator. Any questions or concerns about the evaluation must be addressed directly to Board staff.

6. This is an Interim Agreement and not a final decision by the Board regarding the pending investigative file and as such is subject to further consideration by the Board. The Board reserves the right to take additional action if new information is presented.

7. This Order supersedes all previous consent agreements and stipulations between the Board and/or the Executive Director and Respondent.

17. By letter dated June 23, 2010, Kathleen Muller of the Board's Physician Monitoring Department advised Respondent's then-attorney, Jan Buescher, Esq., that Respondent was required to complete a Psychosexual Evaluation within 30 days at one of the following Board-approved facilities: Sante Center for Healing; The Meadows; or Pinegrove Behavioral Health.

18. On June 25, 2010, Respondent was arrested a second time by the Mesa Police Department on two counts of Sexual Assault and three counts of Sexual Abuse of patient JH.

19. Respondent contacted The Meadows to arrange for the psychosexual evaluation. On June 25, 2010, Respondent received a voice mail message from Kevin Brooks of The Meadows, who left a message that the facility would not perform the evaluation, but the facility would be available if Respondent was later determined to need inpatient treatment.

20. By letter dated June 30, 2010, Ms. Shepherd informed another of Respondent's then-counsel, Peter Fisher, Esq., that the Board's investigation included new allegations of inappropriate conduct by Respondent involving patients SB, JH, HS, MC, EF, and BG. Respondent was requested to provide the Board with his narrative response to the new allegations on or before July 2, 2010.

21. On June 30, 2010, the Board voted to summarily suspend Respondent's License No. 32142.

22. On July 1, 2010, the Board, through its Executive Director, issued Interim Findings of Fact, Conclusions of Law and Order for Summary Suspension in Case No. MD-10-0805A ("Order of Summary Suspension"), the terms of which are incorporated herein by reference. The Order of Summary Suspension summarily suspended Respondent's License No. 32142 pending a formal hearing before the Office of Administrative Hearings, an independent agency. The Order of Summary Suspension further required Respondent to "successfully complete a residential psychosexual evaluation at a Board-approved facility, at his own expense, within the next 30 days and follow all recommendations."

23. By letter dated July 2, 2010, Respondent's then-counsel, Peter F. Fisher, Esq., informed Ms. Shepherd that Respondent "is invoking his Fifth Amendment rights and respectfully declines to respond to the additional allegations you reference in your June 30, 2010 letter" due to the pending criminal investigation of Respondent. Mr. Fisher further advised that Respondent would not comply with the Board's order to undergo a psychosexual evaluation. Mr. Fisher stated that Respondent

would not provide testimony, a response, or submit to a medical or psychosexual evaluation without an offer of immunity.

24. By letter dated August 3, 2010, Ms. Shepherd advised Respondent that the Board had opened an investigation regarding alleged unprofessional conduct by Respondent due to his failure to submit for psychosexual evaluation. The investigation was designated as Case No. MD-10-1036A.

25. By letter dated August 17, 2010, Respondent's counsel, J. Arthur Eaves, advised Ms. Shepherd and the assigned Assistant Attorney General, Anne Froedge, Esq., that Respondent was unable to obtain the psychosexual evaluation because the only instate facility, The Meadows, had turned him down, and the two other Board-approved facilities were out of state. As to the latter explanation, Mr. Eaves stated that Respondent could not travel out of state without the Court's approval. However, there was no evidence presented at any time in this matter that Respondent had requested such permission to travel for the psychosexual evaluation and had been turned down by the Court.

26. As of the hearing, Respondent has not complied with the Board's Order of Suspension requiring him to undergo a psychosexual evaluation.

Patient KH

27. Patient KH established primary care with Respondent in October 2008, for the management of chronic lower back pain, constipation, and recurrent anxiety.

28. At the time she established with Respondent, Patient KH listed her medications from other providers as Oxycontin, Valium, Perc 750, and Inderol.

29. During the course of Patient KH's treatment, Respondent prescribed her anxiolytic, Valium, and Oxycodone on nearly every occasion. Respondent discussed with Patient KH that she needed to be gradually weaned off of narcotics.

30. Patient KH presented to Respondent in December 2009 with extreme abdominal pain. Patient KH reported that, during the office visit, Respondent stated that she needed "more of ..." and patted her crotch. Patient KH left Respondent's practice with extreme abdominal pain and went to the emergency room at Gilbert Hospital.

When she repeated to the ER staff Respondent's statement and conduct in Respondent's office, the ER staff contacted police.

31. Respondent deviated from the standard of care by increasing Patient KH's narcotics dose at her request, after having previously developed a treatment plan to wean Patient KH off the narcotics.

32. Patient KH could have suffered harm due to the potential for narcotic and anxiolytic misuse and abuse.

Patient AT

33. Patient AT is a licensed practical nurse.

34. Patient AT established primary care with Respondent in May 2010.

35. Patient AT has a history of opioid addiction. At the time she established with Respondent, Patient AT had recently undergone opioid detoxification and was participating in the Arizona State Board of Nursing's non-disciplinary Chemically Addicted Nurses Diversion Option ("CANDO").

36. During an office visit on June 7, 2010, Respondent dispensed a single dose of Suboxone to Patient AT and, at the insistence of Patient AT, prescribed Xanax.

37. During the office visit on June 7, 2010, Patient AT reported that Respondent put his forehead against her forehead and started rubbing behind her ears, down her neck to her shoulders, and then started rubbing the upper top of her breast over her clothing. Patient AT stated that Respondent then patted her on her vagina, over her clothes, and asked, "Are you having this?" Patient AT stated that Respondent later hugged her, moving his hands up and down the side of her waist and squeezing her waist.

38. When a patient, such as Patient AT, presents with a history of opioid addiction and recent detoxification, the standard of care requires a review of the patient's recent medical record and/or coordination of care with physicians currently treating the patient's addiction prior to prescribing controlled substances.

39. When a patient presents in presumed withdrawal, the standard of care is to obtain a history of the patient's last use of substances that may result in withdrawal prior to dispensing/prescribing Suboxone.

40. Respondent deviated from the standard of care by improperly dispensing/prescribing controlled substances to Patient AT in the absence of obtaining her medical records, appropriate history and/or coordination with the physicians treating her addiction.

41. Patient AT could have suffered harm of addiction relapse due to interference with her current treatment for addiction.

Patient MAG

42. Patient MAG established primary care with Respondent in February 2007.

43. On June 4, 2007, Patient MAG presented with severe symptoms of gastroesophageal reflux disease ("GERD"), including severe epigastric burning and reflux. She had been previously prescribed Ibuprofen. There is no indication that Respondent instructed Patient MAG to discontinue that medication in light of the GERD symptoms.

44. On March 26, 2010, Patient MAG presented to Respondent because she was very sick with pneumonia. During that visit, Patient MAG contends that Respondent gave her a kiss on each cheek, placed his hands on her neck and felt her glands, and then immediately placed his hands on her breasts.

45. Respondent contends that he placed his hands on Patient MAG's breasts as part of a chest wall compression examination. However, Respondent never explained to Patient MAG why his hands were on her breasts. After that visit, Patient MAG did not return to Respondent's practice because of his conduct.

46. The standard of care requires a physician to assess a patient's complaints of severe GERD symptoms and to instruct the patient to discontinue prescribed NSAID medication, in Patient MAG's case, Ibuprofen, as it could be a possible contributing factor.

47. Respondent deviated from the standard of care by not instructing Patient MAG to stop the previously prescribed Ibuprofen when she presented with severe GERD symptoms.

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Patient JH

48. Patient JH was a patient of Respondent from approximately August 2008, until May 2010.

49. Patient JH has a history of being sexually assaulted.

50. Patient JH alleges that Respondent started hugging her and that the physical contact escalated at subsequent office visits.

51. Patient JH alleges that on one occasion, Respondent reached from behind her and squeezed her right breast over her clothing. Such conduct by Respondent was not part of a legitimate examination.

52. Patient JH further alleges that on one occasion, Respondent put his hands down her pants from behind her, touching her private area, and that on another occasion, he grabbed her crotch. Such conduct by Respondent was not part of a legitimate examination.

53. Patient JH alleges on yet another occasion, Respondent placed her hand on his crotch, which was covered by his pants, while making a comment of a sexual nature. Such conduct by Respondent was not part of a legitimate examination.

54. Patient JH alleges that on almost every visit, Respondent told her she needed to have more sex.

Patient JS

55. Patient JS was a patient of Respondent for approximately three years.

56. During her second visit, Patient JS told Respondent that she was pregnant. Respondent responded by grabbing Patient JS's crotch and saying, "Oh, so you're having plenty of sex."

Patient EF

57. Patient EF alleges that Respondent became inappropriate with her after being his patient for over one year.

58. During her June 2, 2010, office visit, Patient EF alleges that Respondent suggested that she needed to be doing more of "this" and he patted his penis over his clothes. Respondent later made another inappropriate sexual comment while patting his penis over his clothes.

Patient MC

59. Patient MC was a patient of Respondent from approximately December 2007, until May 19, 2010.

60. Patient MC has a history of mental health issues, including anxiety, depression, and bipolar disorder.

61. During the course of her primary care treatment with Respondent, Respondent repeatedly prescribed narcotic medications for chronic pain to Patient MC.

62. Patient MC alleges that she began feeling uncomfortable approximately four months into her treatment with Respondent when he made a comment that maybe she could have sex with him. Patient MC alleges that Respondent made comments of a sexual nature and grabbed her crotch area.

63. Patient MC further alleges that on subsequent visits, Respondent would grab either her breast or crotch. This conduct occurred approximately ten times.

64. The standard of care requires a physician to obtain a medical history which includes a pain assessment in a patient who presents with complaints of chronic pain. The history should include the presence of a recognized medical indication for the use of a controlled substance, the intensity and character of the pain, and questions regarding substance abuse. The medical history should be confirmed by review of medical records and/or by communicating with the patient's prior providers. If a physician is concerned about the use of chronic narcotic medication and determines that a patient's complaints are out of proportion to exam and/or imaging findings and the patient continues to request medication increases, it is the standard of care to involve specialty consultants, including pain management, and to limit narcotic doses.

65. Although the State alleged that Respondent deviated from the standard of care by not obtaining information regarding Patient MC's alcohol and street drug use prior to treating her chronic pain with narcotic medications, the State withdrew this allegation as Respondent produced at hearing a document filled out by MC regarding her past alcohol and street drug use.

Respondent's Medical Records

66. A physician is required to maintain adequate legible medical records containing, at a minimum, sufficient information to identify the patient, support the diagnosis, justify the treatment, accurately document the results, indicate advice and cautionary warnings provided to the patient, and provide sufficient information for another practitioner to assume continuity of the patient's care at any point in the course of treatment.

67. Respondent used an electronic medical record system.

68. Respondent's medical records were inadequate in that physical exam findings were often duplicated from prior notes and the Medication List often included medications that had been changed or discontinued.

MD-10-1036A

69. The Board's Order for Summary Suspension dated July 1, 2010, required Respondent to participate in a psychosexual evaluation within thirty days of the Order.

70. By letter dated July 2, 2010, Respondent's then-counsel, Peter F. Fisher, Esq., informed Ms. Shepherd that Respondent "is invoking his Fifth Amendment rights and respectfully declines to respond to the additional allegations you reference in your June 30, 2010 letter" due to the pending criminal investigation of Respondent. Mr. Fisher further advised that Respondent would not comply with the Board's order to undergo a psychosexual evaluation. Mr. Fisher stated that Respondent would not provide testimony, a response, or submit to a medical or psychological evaluation without an offer of immunity.

71. By letter dated August 3, 2010, Ms. Shepherd advised Respondent that the Board had opened an investigation regarding alleged unprofessional conduct by Respondent due to his failure to submit for a psychosexual evaluation. The investigation was designated as Case No. MD-10-1036A.

72. By letter dated August 17, 2010, Respondent's then-counsel, J. Arthur Eaves, Esq., advised Ms. Shepherd and the assigned Assistant Attorney General, Anne

Froedge, that Respondent was unable to obtain the psychosexual evaluation because the only instate facility, The Meadows, had turned him down, and the other Board-approved facilities were out of state. As to the latter reason, Mr. Eaves stated that Respondent could not travel out of state without the Court's approval due to his release restrictions. However, there is no evidence presented at any time in this matter that Respondent had requested such permission to travel for the psychosexual evaluation and had been turned down by the Court.

73. By letter dated September 10, 2010, Ms. Shepherd advised Mr. Eaves that the Board's investigation in Case No. MD-10-1036A was near completion. Ms. Shepherd enclosed a CD of the Board's Investigation Report with supporting documents. Mr. Eaves was informed that Respondent could file a response by September 27, 2010.

74. On October 28, 2010, the Board's Staff Investigational Review Committee ("SIRC") issued a written recommendation in Case No. MD-10-1036A. SIRC concluded that by failing to undergo the psychosexual evaluation, Respondent failed to demonstrate that he is safe to practice medicine. SIRC recommended that Case No. MD-10-1036A be forwarded to the Office of Administrative Hearings for a consolidated hearing with Case No. MD-10-0805A.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over Respondent and the subject matters in these consolidated cases.

2. Respondent committed unprofessional conduct, pursuant to A.R.S. § 32-1401(27)(e). Respondent failed to maintain adequate patient records as described in the above Findings of Fact.

3. Respondent committed unprofessional conduct pursuant to A.R.S. § 32-1401(27)(q). Respondent's conduct described in the above Findings of Fact posed a threat of harm to his patients and the public.

4. Respondent committed unprofessional conduct pursuant to A.R.S. § 32-1401(27)(r). Respondent violated the Board's Order of Summary Suspension.

5. A.R.S. § 32-1401(27) (z) (ii) defines "sexual conduct" as "[m]aking advances, requesting sexual favors or engaging in other verbal conduct or physical contact of a sexual nature."

6. Respondent committed unprofessional conduct pursuant to A.R.S. § 32-1401(27) (z). Respondent's sexual conduct described in the above Findings of Fact supports this conclusion.

7. Pursuant to A.R.S. § 32-1451(M), Respondent should be assessed the costs of the consolidated hearing in these matters.

ORDER

Case No. MD-10-0805A

Respondent's License No. 32142 shall be revoked in Case No. MD-10-0805A on the effective date of the Order entered in the matter.

Case No. MD-10-1036A

Respondent's License No. 32142 shall be revoked in Case No. MD-10-1036A on the effective date of the Order entered in the matter.

In addition to the above-provided disciplinary penalties, Respondent is assessed the costs of the consolidated hearing for Case Nos. MD-10-0805A and MD-10-1036A, pursuant to A.R.S. § 32-1451(M). Payment of those costs shall be paid to the Board no later than 30 days following the effective date of the Order(s) entered in Case Nos. MD-10-0805A and MD-10-1036A, unless such deadline date is extended by the Board or the Board's designee.

RIGHT TO PETITION FOR REHEARING OR REVIEW

Respondent is hereby notified that he has the right to petition for a rehearing or review. The petition for rehearing or review must be filed with the Board's Executive Director within thirty (30) days after service of this Order. A.R.S. § 41-1092.09(B). The petition for rehearing or review must set forth legally sufficient reasons for granting a rehearing or review. A.A.C. R4-16-103. Service of this order is effective five (5) days

after date of mailing. A.R.S. § 41-1092.09(C). If a petition for rehearing or review is not filed, the Board's Order becomes effective thirty-five (35) days after it is mailed to Respondent.

Respondent is further notified that the filing of a motion for rehearing or review is required to preserve any rights of appeal to the Superior Court.

DATED this 3RD day of February, 2012.

THE ARIZONA MEDICAL BOARD

By _____
LISA WYNN
Executive Director

ORIGINAL of the foregoing filed this 3RD day of February, 2012 with:

Arizona Medical Board
9545 East Doubletree Ranch Road
Scottsdale, Arizona 85258

COPY OF THE FOREGOING FILED this 3RD day of February, 2012 with:

Cliff J. Vanell, Director
Office of Administrative Hearings
1400 W. Washington, Ste 101
Phoenix, AZ 85007

Executed copy of the foregoing mailed by U.S. Mail this 3RD day of February, 2012 to:

Holly R. Gieszl
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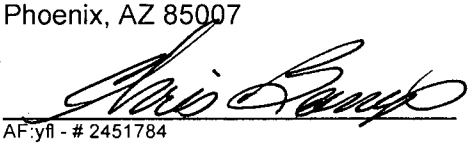

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